

### **REMARKS**

Claims 1-2, 4-37 and 44-47 are now pending in the application. Claims 1-2, 4-37 and 44-47 stand rejected. Claims 1, 2, 22, 23, 25-28, 33, and 34 have been amended and Claim 21 has been cancelled. Minor amendments have been made to the claims to simply overcome the rejections of the claims under 35 U.S.C. § 112. Support for the amendments can be found throughout the application, drawings and claims as originally filed and, as such, no new matter has been presented. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the amendments and remarks contained herein.

### **Interview Summary**

Applicants would like to thank the Examiner for the several telephone conferences related to this matter. While an agreement as to the final patentability of the claims was not reached, the Examiner acknowledged the claims in their present form are distinguished from the references cited.

### **REJECTION UNDER 35 U.S.C. § 112**

Claims 1, 2, 4-26 and 45 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point and distinctly claim the subject matter which Applicants regard as the invention. The Examiner's attention is directed to the claims which have been amended per the Examiner's recommendation. Withdrawal of the rejection is respectfully requested.

### REJECTION UNDER 35 U.S.C. § 102 & § 103

Claims 1-2, 4, 9, 10, 12-15, 17, 19, 21-23, 25, 27, 28, 30, 34, 35 and 47 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Haboush (U.S. Pat. No. 3,067,740). Claims 1-2, 4, 9, 10, 12-15, 17, 19, 21-25, 27, 28, 30, 32-37 and 47 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Haboush (U.S. Pat. No. 3,067,740). Claims 5-8, 11, 16, 18, 20, 26, 29, 31 and 44-46 stand rejected under 35 U.S.C. § 103(a) as being anticipated by Haboush (U.S. Pat. No. 3,067,740) in view of Frederick et al. (U.S. Pat. No. 6,916,342). In view of the amendments and arguments herein, these rejections are respectfully traversed.

Haboush discloses an acetabular component coupled to a prepared acetabulum. The acetabular component includes a bone engaging side 45 and a bearing side 37 which is configured to directly engage an articulating head of a femoral implant 29. Additionally shown is a restraining ring 38 coupled to the acetabular component 36. The restraining ring 38 has a bearing surface 39 which engages the femoral implant 29.

With regard to Frederick, Frederick discloses acetabular prosthesis having a bearing insert 40. The bearing insert 40 is coupled to the acetabular component 22 using a ring lock mechanism. It is noted that the interior surface of the acetabular component 22 is not polished or configured to directly engage an articulating surface of a femoral component.

In contrast to the cited art, independent Claim 1 recites:

...second prosthetic being disposed **between** the generally spherical polished concave bearing surface and an articulating surface of a femoral component, wherein said locking mechanism is configured to fixably couple the second prosthetic to the polished concave bearing surface so as to prevent relative movement therebetween...(emphasis added).

Independent Claim 22 recites:

...said second prosthetic being disposed **between the integral polished spherical bearing surface** and the femoral prosthetic, wherein said locking mechanism is configured to accept the second prosthetic device and prevent relative movement of the second prosthetic device with respect to the integral polished spherical bearing surface...(emphasis added).

Independent Claim 27 recites:

...implanting a second prosthetic having a second spherical concave bearing surface **between** the integral polished internal bearing surface and the femoral bearing, wherein said locking mechanism accepts the second prosthetic and prevents relative movement of the second prosthetic with respect to the integral polished internal bearing surface...(emphasis added).

Independent Claim 33 recites:

...coupling a second prosthetic to said first prosthetic **after removing** the femoral prosthetic from said first prosthetic; and inserting the femoral prosthesis into said first and second prosthetics, wherein said second prosthesis is disposed **between the integral internal bearing surface and the femoral prosthetic**...(emphasis added).

Independent Claim 34 recites:

...said first and second bearing surfaces defining a generally **capsule shaped cavity elongated along a predetermined axis**...(emphasis added).

In view of the above discussion, Applicants respectfully assert the cited art, singly or in combination, does not teach, suggest or disclose each and every element of independent Claims 1, 22, 37, 33 and 34. As such, rejection under 35 U.S.C. § 102(b) or § 103(a) is improper. First, neither of the cited references disclose a second

prosthetic disposed between a polished concave bearing surface of a first prosthetic and an articulating surface of a femoral component as claimed recited in independent Claim 1. Applicants note Frederick does not overcome the deficiencies of Haboush inasmuch as the interior surface of Frederick is not an “inner integral general spherical polished concave bearing surface,” as recited in Claim 1.

With respect to independent Claim 22, Applicants submit the references do not teach or suggest a second prosthetic being disposed between the integral polished spherical bearing surface and the femoral prosthetic, where relative movement of the second prosthetic is prevented with a locking mechanism. With respect to independent Claim 27, Applicants submit the references do not suggest “implanting a second prosthetic having a second spherical concave bearing surface between the integral polished internal bearing surface and the femoral bearing.”

With respect to independent Claim 33, Applicants submit the references are silent as to “coupling a second prosthetic to said first prosthetic after removing the femoral prosthetic from said first prosthetic.” As disclosed in the specification, during revision procedures, it may be helpful to fix a new bearing insert into a previously implanted acetabular cup. None of the references cited disclose this feature.

With respect to independent Claim 34, Applicants note none of the references disclose “generally capsule shaped cavity elongated along a predetermined axis” as claimed. As such, rejection under 35 U.S.C. § 102(b) and § 103(a) is improper.

Accordingly, in view of at least the above discussion, Applicants respectfully submit that the cited art does not teach, suggest or disclose each and every element of

at least independent Claims 1, 22, 27, 33 or 34. Thus, Applicants respectfully request the Office to reconsider and withdrawal the rejection of these claims.


In addition, since Claims 2, 4-20, 23-26, 28-32, 35-37, and 44-47 depend directly or indirectly from these claims, they should be in condition for allowance for at least the reasons set forth above for Claims 1, 22, 27, 33 and 34. Accordingly, Applicants request the Office reconsider and withdraw the rejections of Claims 1, 2, 4-20, 22-37, and 44-47 under §102(b) and §103(a).

#### CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

Dated: Sept 29-09

By:   
Christopher A. Eusebi,  
Reg. No. 44,672

HARNESS, DICKEY & PIERCE, P.L.C.  
P.O. Box 828  
Bloomfield Hills, Michigan 48303  
(248) 641-1600  
CAE/smb